IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10425 of 2002

with

SPECIAL CIVIL APPLICATION No 10427, 10429 & 10497 of 2002

with

SPECIAL CIVIL APPLICATION NO. 10818 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TELECOM DISTRICT MANAGER VALSAD DIST.

Versus

NAMLABHAI RANCHHODBHAI PATEL

Appearance:

1. Special Civil Application No. 10425 of 2002

MR YASHWANT S BAROT for Petitioner No. 1

NOTICE SERVED for Petitioner No. 1

MR PK SHUKLA for Respondent No. 1

RULE UNSERVED for Respondent No. 1

2. Special Civil Application No. 10427 of 2002

MR YASHWANT S BAROT for Petitioner No. 1
MR PK SHUKLA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 27/04/2005

CAV COMMON JUDGEMENT

#. As all these petitions are based on common question of facts and law, they are disposed of by this common judgment.

#. Special Civil Application No. 10425 of 2002 is filed under Article 226 and 227 of the Constitution of India praying for quashing and setting aside the judgment and award dated 20.07.2002 passed in Reference No. ITC/2/96 by the Industrial Tribunal, Surat, directing the petitioner to reinstate the respondent in his original post and to pay all consequential benefits available to him pursuant to the reinstatement and to pay salary at the rate of Rs.800/per month from the date of termination from 05.04.1992 till reinstatement and to pay Rs.1000/by way of cost.

#. Special Civil Application No. 10497 of 2002 is filed under Article 226 and 227 of the Constitution of India praying for quashing and setting aside the judgment and award dated 20.07.2002 passed in Reference No. ITC/1/96 by the Industrial Tribunal, Surat, directing the petitioner to reinstate the respondent in his original post and to pay all consequential benefits available to him pursuant to the reinstatement and to pay salary at the rate of Rs.800/- per month from the date of termination from 05.04.1992 till reinstatement and to pay Rs.1000/by way of cost.

#. Special Civil Application No. 10818 of 2002 is filed under Article 226 and 227 of the Constitution of India praying for quashing and setting aside the judgment and award dated 20.07.2002 passed in Reference No. ITC/3/96 by the Industrial Tribunal, Surat, directing the petitioner to reinstate the respondent in his original post and to pay all consequential benefits available to him pursuant to the reinstatement and to pay salary at the rate of Rs.800/- per month from the date of termination from 11.09.1992 till reinstatement and to pay Rs.1000/by way of cost.

#. Special Civil Application No. 10429 of 2002 is filed

under Article 226 and 227 of the Constitution of India praying for quashing and setting aside the judgment and award dated 20.07.2002 passed in Reference No. ITC/4/96 by the Industrial Tribunal, Surat, directing the petitioner to reinstate the respondent in his original post and to pay all consequential benefits available to him pursuant to the reinstatement and to pay salary at the rate of Rs.800/- per month from the date of termination from 05.04.1992 till reinstatement and to pay Rs.1000/by way of cost.

#. Special Civil Application No. 10427 of 2002 is filed under Article 226 and 227 of the Constitution of India praying for quashing and setting aside the judgment and award dated 20.07.2002 passed in Reference No. ITC/5/96 by the Industrial Tribunal, Surat, directing the petitioner to reinstate the respondent in his original post and to pay all consequential benefits available to him pursuant to the reinstatement and to pay salary at the rate of Rs.800/- per month from the date of termination from 05.04.1992 till reinstatement and to pay Rs.1000/by way of cost.

#. The brief facts of the petitioner's case are such that:

The respondents were engaged on purely daily wages at Vapi for doing casual type of work as casual labourer on different dates. As no casual work was available, they were not called for duty for which they raised Industrial Dispute before the Asst. Labour Commissioner (Central) II at Ahmedabad and at the time of conciliation, conciliation agreement was entered into by the parties and it was agreed that the workman will be allowed to work casually in the same sites as casual labourer on the basis of the work available in the local unit at Vapi and that the management will inform in writing to the workman as and when required for doing casual nature of the work and in case of permanent vacancy in the department, workman can also apply as per the recruitment rules of the petitioner from time to time. Thereafter, in the year 1995 as some work of casual nature was available, the petitioner, as per the conciliation agreement, informed the respondents by communication dated 24.04.1995 to attend the office of the Sub-Judicial Officer, Vapi if they desire to work under SDO (Phones), Vapi. It seems that as they were not desirous to work, they did not attend the work and instead approached the Assistant Labour Commissioner for raising industrial dispute alleging that the conciliation

was not explained to them and they did not opt for it. Thereafter, the respondents approached the Central Government for referring the dispute to the Industrial Tribunal challenging the action of the management of the Telecom District Manager, Valsad in denying the employment to him and the Ministry of Labour vide its order dated 30.05.1996 passed an order referring the dispute to the Industrial Tribunal, Surat to determine whether the action of the management of Telecom District Manager, Valsad in denying the employment to the petitioner is illegal and unjust and if not, what relief workmen are entitled to. Thereafter, the case was referred to as references and the respondents herein submitted their statement of demand, challenging the alleged termination contending that the conciliation agreement before the Asst.Labour Commissioner (C) dated 20.08.1993 is not correct agreement and it is contrary to law and they are not reinstated. It was contended on behalf of the respondents that they had worked for more than 240 days and their services have been terminated without following due procedure u/s 25F of the Industrial Disputes Act and therefore termination is illegal. After hearing the parties, the Industrial Tribunal passed the judgments and awards in respective references as stated above. It is against these judgments, the present petitions are filed.

#. At the time of arguments, Mr. Barot, learned advocate for the petitioner in all the petitions submitted that it is not open for the respondents to raise industrial dispute when conciliation proceeding was already dropped in view of the conciliation agreement arrived at between the parties before the Assistant Labour Commissioner (Central) - II. He further submitted that in view of the conciliation agreement dated 30.06.1993, second reference itself is not maintainable and the respondents cannot have raised industrial dispute again and in view of the conciliation agreement, when the respondents were called to attend duty at Vapi and when he did not resume duty, the Industrial Tribunal ought not to have partly allowed the reference by directing the petitioner to reinstate the respondents to their original post. He further submits that the respondents were engaged on purely daily wages basis at Vapi for doing casual work of labour and he worked on different days in different months and was called for duty as and when the work was available and as there was no work in 1992, he was not called for duty. Therefore, there is no question of following the procedure u/s 25F of the Industrial Disputes Act. He also submitted that though it was specifically mentioned in the conciliation agreement that

the respondents shall be called as and when work is available and also they were called for work on 24.04.1995, but they failed to attend their duty and therefore there is no question of following procedure u/s 25F of the Industrial Disputes Act.

#. Against the aforesaid submissions, Mr. Shukla learned advocate for the respondents submitted that the petition under Article 227 of the Constitution of India seeking to quash and set aside the judgment and award passed by the Industrial Tribunal is not maintainable. He submitted that the respondents were working at Vapi as daily wage casual labourer from August 1990 till March 1992, when their services came to be terminated without following any procedure and that they worked with the petitioner for more than 240 days. The SDO (Telephones) Vapi, District Valsad has also admitted that the respondents had worked for more than 240 days in the preceding years. He further submitted that no retrenchment compensation under Section 25F of the Industrial Disputes Act, 1947 was paid to the respondent and it is a settled principle of law that if retrenchment compensation is not paid under Section 25-F, the workman is entitled to reinstatement with full back wages. He submitted that in spite of repeated representations made by the respondents, the petitioner has not permitted the respondents to resume duty. With regard to the settlement dated 30.06.1993 arrived at between the parties, he submitted that the settlement is not exhibited before the Labour Court and it is produced before this court for the first time and therefore the same cannot be taken into consideration in any manner. He also submitted that the settlement is not recorded in accordance with the provisions of Section 18(1) of the Industrial Disputes Act read with Rule 58.

In support of his submissions, the learned advocate for the respondents has relied on the following authorities :

1. Mohd. Yunus V.s Mohd. Mustaqim and others reported in AIR 1984 SC 38.

2. Daily Rated Casual Labour employed under P & T Department Through Bhartiya Dak Tar Mazdoor Manch V/s Union of India and others reported in (1988) 1 SCC 122.

3. Mohan Amba Prasad Agnihotri and others V/s Bhaskar Balwant Aher (D) Through Lrs. reported in (2000) 3 SCC 190.

4. State of Gujarat V/s Maniben Viraji reported in 2003(4) GLR 3322.

5. Chief Officer, Keshod Municipality V/s Chandrakant Harilal Rakholiya reported in 2003(2) GLR 1755.

6. Gujarat Water Supply & Sewerage Board, Amreli V/s S.K.Rayjada & Anr. reported in 2003(4) GLR 3381.

7. Executive Engineer V/s Vadansingh Madansinh Parmar reported in 2005(1) GLH 205.

8. Union of India V/s Bachu Badia reported in 2000(1) GLH 254.

9. State Trading Corporation of India V/s Sushila Premjibhai Majithiya & Anr. reported in 2000(4) GLR 3412.

10. Adamji M Badri and others V/s Labour Officer and another reported in 1981 LLJ 367 (Gujarat).

11. (M/s) Bharat Textile Works V/s Workmen of (M/s) Bharat Textile Works and another reported in 1994(2) GLH 38.

12. The Management, The Co-operative Store Ltd. V/s Ved Prakash Bhambri reported in 1989 Lab I.C. 289.

13. Workmen of M/s Delhi Cloth General Mills Ltd. V/s The Management of M/s Delhi Cloth and General Mills Ltd. reported in AIR 1970 SC 1851.

14. Keltron Controls V/s Workmen of Keltron Controls and others reported in 2004-II-LLJ page 167.

##. Heard the learned counsel for the parties and perused the authorities cited by the learned advocate for the respondents.

##. The learned advocate for the respondents has mainly raised three contentions : (1) that the respondents have completed 240 days in the preceding years, (2) the respondents are terminated without retrenchment compensation under Section 25-F of the Industrial Disputes Act and (3) the alleged settlement is not recorded in accordance with the provisions of Section 18(1) of the Industrial Disputes Act and Rule 58 of the Industrial Disputes (Central) Rules, 1957 and therefore the settlement is not binding to the workmen respondents herein.

##. As against this, the learned advocate for the petitioner submitted that the settlement was arrived at in the conciliation proceedings on 30.06.93 in Reference No. 1 of 1996 and the respondent workman has signed the same in presence of the advocate and also signed by the petitioner - Telecom District Manager, Valsad. Therefore, now it is not proper for the respondents to back out from the settlement arrived between the parties. So far as the contention regarding following the procedure of the Industrial Act is concerned, the learned advocate for the petitioner submitted that as per the settlement, the respondents were called to attend the office of the Sub-Judicial Officer, Vapi, if he desired to work so under SDO (Phones) Vapi by communication dated 24.04.1995. However, he did jot join duty and raised industrial dispute. Therefore, the question of following procedure under Section 25-F does not arise as the respondents himself have not attended the duty.

In the case of Mohd. Yunus (supra), in para 7 stated as under : "A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art.227. The supervisory jurisdiction conferred on the High Courts under Art.227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority." and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory power under Art.227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

In the case of Daily Rated Casual Labour (supra), in para 9 as stated as under :

"Unless a sense of belonging to the organization engaged in production arises in a workman, he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment at the whim of the management. It is for that reason that as far as possible security of work should be assured to the employees so that they may contribute to the maximization of production. It is again for this reason that managements and the governmental agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonably long period of time. The employees belonging to skilled, semi-skilled and

unskilled classes can be shifted from one department to another even if there is no work to be done in a given place. Our wage structure is such that a worker is always paid less than what he produces, and if any worker remains idle on any day, the country loses the wealth that he would have produced during that day. It is against this background that non-regularisation of temporary employees or casual labour for a long period can be said to be not a wise policy. The respondents are, therefore, directed to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department.

In case of Mohan Amba Prasad Agnihotri (supra), it is held in para 5 as under :

"The jurisdiction of the High Court under Article 227 is not appellate but supervisory. It cannot interfere with a finding of fact recorded by a lower court / tribunal unless there is no evidence to support the finding or the finding is perverse."

In case of Maniben Viraji (supra), in paras 66 to 69, it is held as under :

"The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union & Anr., reported in 2000 SCC (L&S) 471, the Apex Court has held that while exercising the powers under Arts.226 and 227 of the Constitution, interference with pure finding of fact and re-appreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Art.226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of Sugarbai M.Siddiq & Ors. v. Ramesh S.Hankare, reported in 2001 (8) SCC 477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower Court / Tribunal but with its decision-making process. High Court must ascertain whether such Court or Tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise not.

67. Recently also, the Apex Court has considered the scope of Art.226 and 227 of the Constitution of India in

case of Ouseph Mathai & Ors. v. M.Abdul Khadir, reported in 2002(1) SCC 319. The relevant observations in paras 4 & 5 are quoted as under :

"4. It is not denied that the powers conferred upon the High Court under Arts. 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Art.227 confers a right of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. In fact power under this Article casts a duty upon the High Court to keep the inferior Courts and Tribunals within the limits of their authority and they do not cross the limits, ensuring the performance of duties by such Courts and Tribunals in accordance with law conferring powers within the ambit of the enactments creating such Courts and Tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate Courts and Tribunals resulting in grave injustice to any party.

5. In Warayam Singh v. Amarnath this Court held that power of superintendence conferred by Art.227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bora v. Commr. of Hills Division & Appeals. In Babhutmal Raichand Oswal v. Laxmibai Tarte this Court held the High Court could not, in the guise of exercising its jurisdiction under Art.227 convert itself into a Court of appeal when the legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw (All ER at 128), this Court in Chadavarkar Sita Ratna Rao v. Ashalata S.Guram held (SCC page 460 para 20):

"20. It is true that in exercise of jurisdiction under Art.227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of the fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Arts.226 and 227 of the Constitution look into the fact in the absence

of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a findings are perverse and not based on any material evidence or it resulted in manifest injustice (See : Trimbak Gangadhar Telang). Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion, therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limit of jurisdiction under Art.227 of the Constitution. On the first point, therefore, the High Court was in error."

68. Recently also, the Apex Court has considered the scope of Art.226 and 227 of the Constitution in case of Roshan Deen v. Preetilal, reported in 2002 (1) SCC 100. Relevant observations in para 12 are quoted as under:

"12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned single Judge in a case where judicial mind would be tempted to utilise all possible legal measure to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non-suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Art.227 of the Constitution. Time and again, this Court has reminded that the power conferred on the High Court under Art.226 and 227 of the Constitution is to advance justice and not to thwart it (vide State of U.P. v. District Judge, Unnao). The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court, is therefore, not merely to pick out any error of law through an academic angle, but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law, the High Court is not expected to erase such justice in the name of correcting the error of law."

69. Recently also, the Apex Court has examined this question in reported decision in the case of Essen Deinki v. Rajiv Kumar, 2003 SCC (L&S) 13. Relevant paragraphs are as under :

"2. Generally speaking, exercise of jurisdiction under Art.227 of the Constitution is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the Courts below. The finding of fact being within the domain of the inferior Tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the Article is not called for.

3. The observations above, however, find affirmance in the decision of this Court in Nibaran Chandra Bag v. Mahendra Nath Ghughu. In Nibaran this court has been rather categorical in recording that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate Courts or Tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority. More recently, in Mani Nariman Daruwala v. Phiroz N.Bhatena this Court in a similar vein stated :

"In the exercise of this jurisdiction the High Court can set aside or ignore the findings of fact of an inferior Court or Tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the Court or Tribunal who (sic.) has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the findings of fact."

4. Needless to record that there is total unanimity of judicial precedents on the score that error must be that of law and patently on record committed by the interior Tribunal so as to warrant intervention - it ought not to act as a Court of appeal and there is no dissension or even a contra-note being sounded at any point of time till date. Incidentally, the illegality, if there be any, in an order of an inferior Tribunal, it would, however, be a plain exercise of jurisdiction under the Article to correct the same as otherwise the law Courts would fail to subserve the needs of the society since illegality cannot even be countenanced under any circumstances.

5. In this context reference may also be made to a still later decision of this Court in the case of Savita Chemicals (P) Ltd. v. Dyes & Chemical Workers' Union, wherein this Court in para 19 of the Report observed :

"Under Art. 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law."

In case of Chandrakant Harilal Rakholiya (supra), in para 15 it is held that "Unless and until it is successfully pointed out that the Labour Court has acted without jurisdiction or that the findings recorded by the Labour Court are contrary to record or are perverse, this Court cannot interfere with the findings recorded by the Labour Court while exercising the extraordinary powers under Arts. 226 and/or 227 of the Constitution of India.

In the case of Gujarat Water Supply & Sewerage Board (supra), it is held in para 5 as under :

"5. Oral as well as the documentary evidence of the respondent was examined by the Labour Court, and has come to the conclusion hat since 1984 both the workmen are working on the post of driver continuously without any break and the evidence of the workmen had remained unchallenged, the same was believed by the Labour Court. The entire award made by the Labour Court perused and no procedural irregularity committed by the Labour Court. Upon perusal of the impugned award, the Labour Court has not committed any jurisdictional error which would require interference of this Court in exercise of the powers under Arts. 226 and/or 227 of the Constitution of India. While granting relief in favour of the respondents-workmen, the Labour Court has taken care to the effect that though direction has been issued to make the workmen permanent with effect from 1.1.1991, they were ordered to be considered permanent on notional basis with effect from 1.1.1991 till the date of the award i.e., for the period from 1.1.1991 till the date of the award, the petitioner has not been directed to make payment of any monetary benefits, and therefore, according to the Court it is just and fair award made by the Labour Court and the petitioner has not been saddled with any financial liability for the period from 1.1.1991 till the date of the award. There is no error committed by the Labour Court while passing such award."

In case of Vadamsingh Madansingh Parmar (supra), it is held in para 4 as under :

" In Mohan Lal V/s The Management of M/s Bharat Electronics Ltd. (AIR 1981 SC 1253) the Supreme Court has specifically held that where pre-requisite for valid retrenchment as laid down in Section 25F has not been complied with, retrenchment bringing about termination of service is ab initio void. Recently also, in Krishna Bahadur and M/s Purna Theatre and others [2004 (103) FLR 146], the Apex Court has held that the provisions of Section 25F of the ID Act, 1947 are imperative in character and it postulates the fulfillment of three conditions. It was observed by the Apex Court as under in para 10 of the Judgment :

"It is neither in doubt nor in dispute that the provision of Section 25-F(b) is imperative in character. The provisions postulates the fulfillment of the following three conditions :
(i) One month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice ;

(ii) Payment of compensation equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and

(iii) Notice to the appropriate Government in the prescribed manner.
The requirement to comply with the provision of Section 25-F(b) has been held to be mandatory before retrenchment of a workman is given effect to. In the event of any contravention of the said mandatory requirement, the retrenchment would be rendered void ab initio.

In Workmen of Sudder Workshop of Jorehaut Tea Co.Ltd. Vs. The Management [1980(40) FLR 474 (SC)], whereupon the reliance has been placed by the Division Bench this Court held :

"That apart, if there be noncompliance with Section 25-F, the law is plain that retrenchment is bad..."

In case of Sushila Premjibhai Majithiya & Anr. (supra), it is held in para 9 as under :

"9. Now in respect to the second contention that the respondents-workmen being daily wagers, they are not `workmen' within the meaning of Sec.2(s) of the Act, learned advocate Mr.Thakkar has placed reliance upon the

decision of the Apex Court in the matter between Himanshu Kumar Vidhyarthi V. State of Bihar reported in AIR 1997 SC 3657. In the said decision, the Apex Court has held that daily wage employee appointed on the basis of need of work, his termination of service cannot be construed to be retrenchment within the meaning of Sec.25F of the I.D.Act. But, there is another decision of the Apex Court in the matter of Ratansinh V. Union of India, reported in 1997(11) SCC 396 wherein, the Apex Court has held that even daily-rated employees are entitled to the benefit of Sec.25F of the I.D.Act and they are `workman' within the meaning of Sec.2(s) of the Industrial Disputes Act, 1947. Subsequently, the Apex Court in the matter of Municipal Corporation of Delhi V. Praveen Kumar Jain, reported in 1998(2) LLJ 674 has also considered the very same question that daily-rated workman discharged their service without complying the provisions of Sec.25-F of the Act are entitled to the protection of said Sec.25-F of the Act. Even thereafter, in another decision of the Apex Court in the matter of All India Radio V.Santosh Kumar, reported in 1998 (78) FLR 814 wherein also the question of casual workers of All India Radio has been examined by the Apex Court and considering this aspect, it has been held that even in respect to the daily wager casual labour also, Sec.25-F is required to be followed and if it is not followed and it is violated, then the order of termination is required to be set aside and reinstatement with all benefit is required to be granted. Similarly, Division Bench of this Court has also considered the same issue in the matter of Rajniben Prabhatbhai V. Executive Engineer, Unja Irrigation Project Division, reported in 1998(2) GLH (UJ) 16 wherein also, the question of daily wager has been examined by the Division Bench and relying upon the unreported judgment of this Court in Special Civil Application No. 813 of 1994 came to the conclusion that if daily-wager has completed 240 days continuous service, then provision of Sec.25-F is required to be followed, which is mandatory in nature. There is another decision of Madhya Pradesh High Court, rendered by the Hon'ble Chief Justice Shri D.M.Dharmadhikari, reported in 1998(80) FLR 54 [M.P.Textool Corporation V. Krishnakant Pancholi] wherein, it has been held that even if employee engaged for meeting rush or overload of work or contingency, even then the provision of Sec.25-F would be attracted and termination of service of such an employee without payment of retrenchment compensation would be void ab initio. In the said decision, it has been further held that provision of Sec.25-F are applicable to all cadres of employees, including those employed on daily-rated basis or for seasonal work or intermediate nature. All

cadres of employees putting in more than 1 year of continuous service are entitled to payment of retrenchment compensation as a condition precedent for their retrenchment under Sec.25-F of the Industrial Disputes Act, 1947."

In case of Adamji M Badri (supra), it is held that "The question whether a settlement was obtained by fraud is not outside the scope of the Act and it is not necessary to refer the matter to a civil Court. The definition of Industrial Dispute in S.2(k) is wide enough to embrace within its sweep any dispute or difference between an employer and his workmen connected with the terms of their employment. A settlement between the employer and his workmen affects the terms of their employment. If such a settlement was obtained by fraud or force it would adversely affect the terms of employment of workmen. Therefore, prima facie, the definition of industrial dispute in S.2(k) will embrace within its sweep the investigation of the fraudulent and involuntary character of settlement."

In case of (M/s) Bharat Textile Works (supra), "As a result of the consideration of the above referred judgment, it can be easily seen that though a written notice terminating the settlement is necessary before an Industrial Dispute can be referred for adjudication, there is no insistence on any formal or prescribed mode of termination. If there is any correspondence from which termination can be culled out with reference to a particular date, that can be treated as a notice terminating the settlement. Such termination can even be an advance termination issued before the expiry of the settlement. It can be simultaneous or as a part of charter of demand and it can be culled out even from subsequent correspondence as was done in the Western India Match Company's case. In that case also there was no notice of termination and a simple charter of demand was issued and when an objection was raised by the employer on the absence of termination of the previous settlement, the Union had given a reply that the charter of demand be treated as termination of settlement. The Supreme court upheld that letter as the notice terminating the settlement."

In the case of Ved Prakash Bhambri (supra), it is held in paras 7 and 9 as under :

"7. Where in a reference of the dispute to the Industrial Tribunal though there is no plea taken by the workman in challenging the settlement on the score that

it did not comply with R.58 of the Industrial Disputes (Central) Rules, (1957), the Tribunal has jurisdiction to hold the settlement invalid on that score. Because the question whether the settlement was arrived at in accordance with the statute and the rules is a question of law and such a question can always be raised during even the course of arguments. There is no necessity of taking any plea by the workman in his pleadings in this respect that the settlement being not in accordance with law was invalid."

"9.R.58 of the Industrial Disputes (Central) Rules (1957) and Form `H' have to be strictly followed before a settlement which has been arrived at between the employer and the workman otherwise than in the course of conciliation proceeding could be considered valid."

In case of Workmen of M/s Delhi Cloth General Mills ltd. (supra) in para 15 and 17 it is held as under : "The Management and the Union cannot, when a dispute is referred to the Conciliation Officer, claim absolute freedom of contract to arrive at a settlement in all respects binding on all workmen, to which no objection whatsoever can ever be raised by the workmen feeling aggrieved. The question of a valid and binding settlement in such circumstances is governed by the statute and the rules made thereunder. In the light of definition of `settlement' in section 2(p) and the provisions of section 18(1) it is clear that section 18(1) does not vest in the Management and the Union unfettered freedom to settle the dispute as they please and clothe it with a binding effect on all workmen or even on all member workmen of the Union. The settlement has to be in compliance with the statutory provisions. Hence, where there is non-compliance with Rule 58(4) the settlement is invalid. It is incumbent in such a case on the Tribunal to satisfy itself that the settlement relied upon by the management in support of the plea of legality of settlement, which vitally affected its jurisdiction, was in accordance with the provisions of Industrial Disputes Act and the statutory rules.

##. From the aforesaid binding judgments, I am of the opinion that the respondents- workmen have completed 240 days and they were discharged without giving the benefits of Section 25-F of the Industrial Disputes Act. So far as the settlement is concerned, the decisions of the Hon'ble Apex Court and this Court are favouring the respondents and therefore I am of the opinion that the settlement cannot be said to be a binding settlement in the eye of law. Also, under Article 227 of the

Constitution of India, this Court has limited jurisdiction to interfere with the order of the lower court. In view of the above, all these petitions deserve to be dismissed and accordingly they are dismissed. Rule discharged. Ad-interim relief granted earlier stands vacated. No order as to costs.

(SHARAD D DAVE, J)

srilatha